

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

EDDIE LEE JAMES,

Defendant-Appellant.

UNPUBLISHED
February 21, 2003

No. 236046
Wayne Circuit Court
LC No. 96-006986-01

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Defendant was charged with first-degree murder, MCL 750.316, conspiracy to commit first-degree murder, MCL 750.157a, four counts of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a bench trial, the court found defendant guilty of the lesser offenses of second-degree murder, MCL 750.317, and four counts of felonious assault, MCL 750.82, and the charged offense of felony-firearm. He was acquitted of conspiracy. The court sentenced defendant to concurrent prison terms of 70 to 150 years for the murder conviction, and two to four years each for the felonious assault convictions, to be served consecutive to a two-year term for the felony-firearm conviction. He appeals as of right. We affirm defendant's convictions, but remand to the trial court in order that the court may articulate the reasons for exceeding the guidelines' recommended minimum sentence.

This case arises out of the fatal shooting of eleven-year-old James White. Defendant's family had continuing arguments with members of the White family. In the past, defendant and his brother drove past the victim's home, shooting guns in the air. On August 19, 1996, defendant, his brother, and two others ran through a field, shooting at Joseph White (uncle of the deceased) and three friends who were sitting on a porch with friends. When the shooting ended, James White was found fatally wounded in front of his house.

I. Sufficiency of the Evidence

Defendant argues that there was insufficient evidence to establish his guilt. We must determine whether, when the evidence is viewed in the light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

Defendant specifically argues that the testimony of the prosecution's strongest witness was outweighed by conflicting testimony of other witnesses who did not see any firearms. We reject defendant's argument. An argument that a witness was not credible affects the weight of the evidence, not the sufficiency; the credibility of witnesses is for the trier of fact to resolve and will not be resolved anew on appeal. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). James White's uncle saw defendant running through a field with a firearm, and the witness could see flashes or sparks coming from the weapon. The witness had known defendant all his life. Defendant and at least one other man shot at the witness and three of his friends, striking one of them. James White was found fatally wounded in front of his house. When viewed most favorably to the prosecution, this evidence was sufficient to sustain defendant's convictions.

II. Sentencing Issues

Defendant also argues that the trial court erred by failing to articulate reasons for exceeding the sentencing guidelines' recommended minimum sentence range for the murder conviction. We agree. Because this offense occurred before January 1, 1999, the judicial guidelines apply. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000).

The recommended minimum sentence range under the guidelines was twenty to forty years or life. The actual minimum sentence imposed was 70 years. To facilitate appellate review, the sentencing court was required to state on the record its reasons for departing from the guidelines' recommended minimum sentence range. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Although the court mentioned that the killing took place at nighttime and that a Detroit Police homicide investigator was reassigned to another division because of some connection to this case, the court never specifically identified its reasons for exceeding the guidelines.¹ Accordingly, we remand this matter for further articulation of the court's reasons for exceeding the guidelines' range.

Defendant's convictions are affirmed, and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Brian K. Zahra

/s/ Bill Schuette

¹ If the court intended to rely on these reasons for exceeding the guidelines, it did not say so. We offer no opinion at this time as to whether these explanations are sufficient under *People v Milbourn*, 435 Mich 630, 660; 461 NW2d 1 (1990). Defendant argues that his sentence is disproportionate under *Milbourn*, but it is premature to address that argument without knowing the trial court's specific reasons for imposing the sentence.